

1 ANDREW L. PACKARD (State Bar No. 168690)  
2 MEGAN E. TRUXILLO (State Bar No. 275746)  
3 Law Offices of Andrew L. Packard  
4 100 Petaluma Blvd. N., Suite 301  
5 Petaluma, CA 94952  
6 Tel: (707) 763-7227  
7 Fax: (707) 763-9227  
8 Email: Andrew@packardlawoffices.com

9 FREDRIC EVENSON (State Bar No. 198059)  
10 Ecology Law Center  
11 P.O. Box 1000  
12 Santa Cruz, CA 95061  
13 Telephone: (831) 454-8216  
14 Email: Evenson@ecologylaw.com

15 Attorneys for Plaintiff  
16 ECOLOGICAL RIGHTS FOUNDATION

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ECOLOGICAL RIGHTS  
20 FOUNDATION, a non-profit  
21 corporation,

22 Plaintiff,

23 vs.  
24 PENINSULA CORRIDOR JOINT  
25 POWERS BOARD and TRANSIT  
26 AMERICA SERVICES, INC.,  
27  
28 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

**(Federal Water Pollution Control Act, 33  
U.S.C. §§ 1251–1387)**

29 ECOLOGICAL RIGHTS FOUNDATION (“EcoRights” or “Plaintiff”), by and  
30 through its counsel, hereby alleges:

31 **I. JURISDICTION AND VENUE**

32 1. This is a civil suit brought under the citizen suit enforcement provision of the  
33 Federal Water Pollution Control Act, 33 U.S.C. §§ 1251–1387 (the “Clean Water Act”, the  
34 “CWA” or “the Act”) against the PENINSULA CORRIDOR JOINT POWERS BOARD and  
35 Complaint For Declaratory and  
36 Injunctive Relief and Civil Penalties

1 TRANSIT AMERICA SERVICES, INC. (collectively referred to as “Defendants”). This  
 2 Court has subject matter jurisdiction over the parties and the subject matter of this action  
 3 pursuant to Section 505(a)(1) of the Act, 33 U.S.C. § 1365(a), and 28 U.S.C. § 1331 (an  
 4 action arising under the laws of the United States). Specifically, this action arises under  
 5 Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A) (citizen suit to enforce effluent  
 6 standard or limitation). The relief requested is authorized pursuant to 33 U.S.C. § 1365(a)  
 7 (injunctive relief), 33 U.S.C. §§ 1365(a), 1319(d) (civil penalties), and 28 U.S.C. §§ 2201–  
 8 2202 (power to issue declaratory relief in case of actual controversy and further necessary  
 9 relief based on such a declaration).

10       2. On or about May 13, 2015, Plaintiff provided written notice to Defendants, via  
 11 certified mail, of Defendants’ violations of the Act (“CWA Notice Letter”), and of their  
 12 intention to file suit against Defendants, as required by the Act. *See* 33 U.S.C. §  
 13 1365(b)(1)(A); 40 C.F.R. § 135.2(a)(1) (1991). Plaintiff mailed a copy of the CWA Notice  
 14 Letter to the Administrator of the United States Environmental Protection Agency (“EPA”);  
 15 the Administrator of EPA Region IX; the Executive Director of the State Water Resources  
 16 Control Board (“State Board”); and the Executive Officer of the Regional Water Quality  
 17 Control Board, Central Coast Region (“Regional Board”), pursuant to 40 C.F.R.  
 18 § 135.2(a)(1) (1991). A true and correct copy of EcoRights’ CWA Notice Letter is attached  
 19 hereto as Exhibit A, and is incorporated by reference.

20       3. More than sixty days have passed since Plaintiff served this CWA Notice  
 21 Letter on Defendants and the agencies. Plaintiff is informed and believes, and thereupon  
 22 alleges, that neither the EPA nor the State of California has commenced nor is diligently  
 23 prosecuting a court action to redress the violations alleged in this Complaint. This action’s  
 24 claims for civil penalties are not barred by any prior administrative penalty under Section  
 25 309(g) of the Act, 33 U.S.C. § 1319(g).

26       4. Venue is proper in the Northern District of California pursuant to Section  
 27 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are  
 28 located within this District. Venue is also proper under 28 U.S.C. § 1331(b) because  
 Complaint For Declaratory and  
 Injunctive Relief and Civil Penalties

1 Defendants do business in this District and a substantial part of the events or omissions  
 2 giving rise to Plaintiff's claims occurred in this District. Intra-district venue is proper in San  
 3 Jose, California, because the sources of the violations are located within Santa Clara County.

4 **II. INTRODUCTION**

5. This Complaint seeks relief for Defendants' violations of the CWA at the  
 6 approximately 4-acre rail service facility owned and/or operated by Defendants (the  
 7 "Facility"). The Facility is located at 7150/7250 Monterey Road, in Gilroy, California.  
 8 Plaintiff is informed and believes, and thereupon alleges, that Defendants discharge  
 9 pollutant-contaminated storm water from the Facility into the City of Gilroy's Municipal  
 10 Separate Storm Sewer System, which conveys that water into Llagas Creek, which flows into  
 11 the Pajaro River, and ultimately Monterey Bay. Plaintiff is informed and believes, and  
 12 thereupon alleges, that Defendants are in violation of both the substantive and procedural  
 13 requirements of the CWA. Defendants deny these allegations.

14. Plaintiff is informed and believes, and thereupon alleges, that Defendants'  
 15 discharge of pollutant-contaminated storm water from the Facility is in violation of the Act  
 16 and the State of California's General Industrial Permit for storm water discharges, State  
 17 Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as  
 18 amended by Water Quality Order No. 92-12-DWQ, Water Quality Order No. 97-03-DWQ,  
 19 and Water Quality Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination  
 20 System ("NPDES") General Permit No. CAS000001 (hereinafter "General Permit" or  
 21 "Permit"). Plaintiff is informed and believes, and thereupon alleges, that Defendants'  
 22 violations of the filing, monitoring, reporting, discharge and management practice  
 23 requirements, and other procedural and substantive requirements of the General Permit and  
 24 the Act are ongoing and continuous. Defendants deny these allegations.

25. The failure on the part of industrial facility operators to comply with the  
 26 General Permit is recognized as a significant cause of the continuing decline in water quality  
 27 of receiving waters, such as Llagas Creek, the Pajaro River, and the Monterey Bay. The  
 28 general consensus among regulatory agencies and water quality specialists is that storm

1 water pollution amounts to more than half the total pollution entering the marine  
2 environment each year. With every rainfall event, hundreds of thousands of gallons of  
3 polluted storm water originating from industrial facilities discharge to Llagas Creek, the  
4 Pajaro River, and the Monterey Bay

5 **III. PARTIES**

6 8. Plaintiff EcoRights is a non-profit public benefit corporation organized under  
7 the laws of California, with its main office in Garberville, California. EcoRights' purpose is  
8 to educate the public about environmental practices which cause harm to human health, the  
9 environment and other natural resources, and to seek redress from those harms through  
10 litigation or alternative dispute resolution. EcoRights represents citizens in protecting  
11 California's waterways from pollution, securing the multitude of benefits that flow from  
12 clean, vibrant waters: safe drinking water, abundant and diverse wildlife populations, healthy  
13 recreational opportunities, and economic prosperity from commercial fishing, tourism, and  
14 other commercial activities that depend on clean water. To further its goals, EcoRights  
15 actively seeks federal and state agency implementation of state and federal water quality  
16 laws, including the CWA, and as necessary, directly initiates enforcement actions on behalf  
17 of itself and its members.

18 9. Members of EcoRights, including citizens, taxpayers, property owners, and  
19 residents, live, work, travel and recreate near Llagas Creek, the Pajaro River, and the  
20 Monterey Bay (hereinafter collectively referred to as "impacted waters"), into which  
21 Defendants cause pollutants to be discharged. These EcoRights members use and enjoy the  
22 impacted waters for recreational, educational, scientific, conservation, aesthetic, and spiritual  
23 purposes. Defendants' alleged discharge of storm water containing pollutants impairs each  
24 of those uses. Thus, the interests of EcoRights' members have been, are being, and will  
25 continue to be adversely affected by Defendants' failure to comply with the Clean Water Act  
26 and the General Permit.

27 10. Members of EcoRights reside in California and use and enjoy California's  
28 numerous rivers for recreation and other activities. Members of EcoRights use and enjoy the  
Complaint For Declaratory and  
Injunctive Relief and Civil Penalties

1 waters of Llagas Creek, the Pajaro River, and the Monterey Bay, into which Defendants have  
 2 caused, are causing, and will continue to cause, pollutants to be discharged. Members of  
 3 EcoRights use these areas to fish, sail, boat, kayak, swim, bird watch, view wildlife, and  
 4 engage in scientific study, including monitoring activities, among other things. Defendants'  
 5 discharges of pollutants threaten or impair each of those uses or contribute to such threats  
 6 and impairments. Thus, the interests of EcoRights' members have been, are being, and will  
 7 continue to be adversely affected by Defendants' ongoing failure to comply with the Clean  
 8 Water Act. The relief sought herein will redress the harms to Plaintiff caused by Defendants'  
 9 activities.

10       11. Continuing commission of the acts and omissions alleged above would  
 11 irreparably harm Plaintiff and the citizens of the State of California, for which harm they have  
 12 no plain, speedy or adequate remedy at law.

13       12. Plaintiff is informed and believes, and thereupon alleges that Defendants  
 14 PENINSULA CORRIDOR JOINT POWERS BOARD and TRANSIT AMERICA  
 15 SERVICES, INC. own and/or operate the Facility.

16 **IV.     LEGAL BACKGROUND**

17       A.     **Clean Water Act**

18       13. Congress enacted the CWA to "restore and maintain the chemical, physical,  
 19 and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA  
 20 establishes an "interim goal of water quality which provides for the protection and  
 21 propagation of fish, shellfish, and wildlife and provides for recreation in and on the water . . ."  
 22 33 U.S.C. § 1251(a)(2). To these ends, Congress developed both a water quality-based  
 23 and technology-based approach to regulating discharges of pollutants from point sources into  
 24 waters of the United States.

25       14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
 26 pollutant from a point source into waters of the United States, unless such discharge is in  
 27 compliance with various enumerated sections of the Act. Among other things, Section  
 28 301(a) prohibits discharges not authorized by, or in violation of, the terms of an NPDES

1 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

2       15.     The term “discharge of pollutants” means “any addition of any pollutant to  
 3 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to  
 4 include, among other examples, industrial waste, chemical wastes, biological materials, heat,  
 5 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

6       16.     A point source is defined as “any discernible, confined and discrete  
 7 conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . .  
 8 from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

9       17.     “Navigable waters” means “the waters of the United States.” 33 U.S.C.  
 10 § 1362(7). Waters of the United States includes, among others things, waters that are, were,  
 11 or are susceptible to use in interstate commerce, and tributaries to such waters. 40 C.F.R. §  
 12 230.3 (2015).

13       18.     Section 402(p) of the Act establishes a framework for regulating municipal  
 14 and industrial storm water discharges under the NPDES program, 33 U.S.C. § 1342(p), and,  
 15 specifically, requires an NPDES permit for storm water discharges associated with industrial  
 16 activity. *Id.* § 1342(p)(2)(B).

17       19.     Section 505(a)(1) provides for citizen enforcement actions against any  
 18 “person,” including individuals, corporations, or partnerships, 33 U.S.C. § 1362(5), for  
 19 violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33  
 20 U.S.C. § 1365(a)(1) (authorizing actions against any person alleged to be in violation of an  
 21 effluent standard or limitation); *id.* § 1365(f) (defining “effluent limitation” broadly to  
 22 include “a permit or condition thereof issued under [section 402] of this title,” and “any  
 23 unlawful act under subsection (a) of [section 301] of this title”).

24       20.     An action for injunctive relief under the Act is authorized by 33 U.S.C. §  
 25 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to  
 26 \$37,500 per day for violations occurring after January 12, 2009, pursuant to Sections 309(d)  
 27 and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. §§ 19.1–19.4 (2008).

28       **B.     State Regulations**

Complaint For Declaratory and  
 Injunctive Relief and Civil Penalties

1       21. The Pajaro River and Llagas Creek are heavily degraded from pollutant  
 2 loading. This is officially recognized by the EPA, the State Board and the Regional Board,  
 3 which have placed both waterbodies on the CWA section 303(d) list of waters that they do  
 4 not meet applicable water quality standards. The Regional Board's Basin Plan is the master  
 5 policy document setting forth the legal, technical, and programmatic bases of water quality  
 6 regulation in the Region. Among other things, the Basin Plan includes the water quality  
 7 objectives needed to protect the designated beneficial water uses. The Basin Plan sets forth  
 8 narrative water quality objectives for sediment, settleable and suspended materials, as well as  
 9 narrative objectives for not impairing water quality with oil sheens, turbidity, or other  
 10 nuisance conditions. The Basin Plan also includes numeric water quality standards for pH,  
 11 dissolved oxygen and toxic pollutants as well as site specific objectives for certain pollutants  
 12 of concern such as copper, lead and zinc.

13       22. The Pajaro River is listed on the section 303(d) list as impaired for boron,  
 14 chlordane, chloride, chlorpyrifos, dichlorodiphenyldichloroethane, dieldrin, *E. Coli*, fecal  
 15 coliform, low dissolved oxygen, sedimentation/siltation, nitrate, nutrients, polychlorinated  
 16 biphenyls, pH, sedimentation/siltation sodium and turbidity.

17       23. Llagas Creek is also listed on the section 303(d) list as impaired for chloride,  
 18 chlorpyrifos, electrical conductivity, *E. Coli*, fecal coliform, low dissolved oxygen,  
 19 sedimentation/siltation, nutrients, turbidity, sodium and total dissolved solids.

20       24. In addition, a rule promulgated by EPA known as the California Toxics Rule  
 21 ("CTR"), discussed further below, sets Water Quality Standards ("WQS") for 126 toxic  
 22 priority pollutants in California's rivers, lakes, enclosed bays, and estuaries. The CTR, which  
 23 applies to Llagas Creek and the Pajaro River, and includes limits for several toxic metals.

#### 24           C. California Industrial Storm Water General Permit

25       25. Section 402 authorizes states with approved NPDES permit programs to  
 26 regulate industrial storm water discharges through individual permits issued to dischargers  
 27 and/or through the issuance of a single, statewide general permit applicable to all industrial  
 28 storm water dischargers. 33 U.S.C. § 1342(b).

1       26. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of  
2 EPA has authorized California's State Board to issue NPDES permits including general  
3 NPDES permits in California.

4       27. The State Board elected to issue a statewide general permit for industrial  
5 discharges. The State Board issued the General Permit on or about November 19, 1991,  
6 modified the General Permit on or about September 17, 1992, and reissued the General  
7 Permit on April 17, 1997 and again on April 1, 2014 (effective July 1, 2015), pursuant to  
8 Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

9       28. Facilities discharging, or having the potential to discharge, storm water  
10 associated with industrial activity that have not obtained an individual NPDES permit must  
11 apply for coverage under the State's General Permit by filing a Notice of Intent ("NOI").  
12 The General Permit requires facilities to file their NOIs before the initiation of industrial  
13 operations.

14       29. Once regulated by an NPDES permit, facilities must strictly comply with all  
15 of the terms and conditions of that permit. A violation of the General Permit is a violation of  
16 the Act. *See General Permit, Section XXI.A.*

17       30. In order to discharge storm water lawfully in California, industrial  
18 dischargers must comply with the terms of the General Permit or have obtained and  
19 complied with an individual NPDES permit.

20       31. The General Permit contains three primary and interrelated categories of  
21 requirements: 1) discharge prohibitions; 2) Storm Water Pollution Prevention Plan  
22 ("SWPPP") requirements; and 3) monitoring and reporting requirements, including the  
23 requirement to prepare an annual report.

24       32. Discharge Prohibition III.B of the General Permit prohibits the direct or  
25 indirect discharge of materials other than storm water ("non-storm water discharges"), which  
26 are not otherwise regulated by an NPDES permit, to the waters of the United States.  
27 Discharge Prohibition III.C of the General Permit prohibits storm water discharges and  
28 authorized non-storm water discharges that cause or threaten to cause pollution,

1 contamination or nuisance as defined in section 13050 of the California Water Code.  
 2 Receiving Water Limitation VI.A of the General Permit prohibits storm water discharges  
 3 that cause or contribute to an exceedance of any applicable water quality standards in any  
 4 affected receiving water. Receiving Water Limitation VI.B of the General Permit prohibits  
 5 storm water discharges to any surface or ground water that adversely impact human health or  
 6 the environment.

7       33.      Effluent Limitation V.A of the General Permit requires dischargers to reduce  
 8 or prevent pollutants in their storm water discharges through implementation of the Best  
 9 Available Technology Economically Achievable (“BAT”) for toxic and nonconventional  
 10 pollutants and the Best Conventional Pollutant Control Technology (“BCT”) for  
 11 conventional pollutants.

12       34.      EPA has established Benchmark Levels as guidelines for determining  
 13 whether a facility discharging industrial storm water has implemented the requisite BAT and  
 14 BCT standards. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks  
 15 have been established for pollutants discharged by Defendants: Total Suspended Solids –  
 16 100 mg/L; Zinc – 0.117 mg/L; Copper – 0.0636 mg/L; and Lead – 0.0816 mg/L.

17       35.      The Regional Board has established water quality standards for Llagas  
 18 Creek, the Pajaro River and the Monterey Bay in the Water Quality Control Plan for the  
 19 Central Coast Basin, generally referred to as the “Basin Plan.”

20       36.      The Basin Plan includes a toxicity standard which states that “[a]ll waters  
 21 shall be maintained free of toxic substances in concentrations which are toxic to or which  
 22 produce detrimental physiological responses in, human, plant, animal, or aquatic life.”

23       37.      The Basin Plan provides that “[w]aters shall not contain concentrations of  
 24 chemical constituents known to be deleterious to fish or wildlife.”

25       38.      The Basin Plan provides that “[a]t a minimum, water designated for use as  
 26 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
 27 constituents in excess of the maximum contaminant levels (MCLs).”

28       39.      EPA issued the CTR in 2000, establishing numeric receiving water limits for  
 Complaint For Declaratory and  
 Injunctive Relief and Civil Penalties

1 certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38 (2013). The CTR  
 2 establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L  
 3 (maximum concentration) and 0.150 mg/L; chromium (III) – 0.550 mg/L (maximum  
 4 concentration); copper – 0.013 mg/L (maximum concentration); and lead – 0.065 mg/L  
 5 (maximum concentration), subject to water hardness.

6       40.      The General Permit requires dischargers to develop and implement a site-  
 7 specific SWPPP. General Permit, Section X.A. The SWPPP must include, among other  
 8 elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial  
 9 materials; (4) a description of potential pollution sources; (5) an assessment of potential  
 10 pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring  
 11 implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the  
 12 date that the SWPPP was initially prepared and the date of each SWPPP amendment, if  
 13 applicable.

14       41.      Dischargers must revise their SWPPP whenever necessary and certify and  
 15 submit via the Regional Board’s Storm Water Multiple Application and Report Tracking  
 16 System (“SMARTS”) their SWPPP within 30 days whenever the SWPPP contains  
 17 significant revisions(s); and, certify and submit via SMARTS for any non-significant  
 18 revisions not more than once every three (3) months in the reporting year. General Permit,  
 19 Section X.B.

20       42.      Dischargers must implement the minimum BMPs identified in Section  
 21 X.H.1. of the General Permit. In addition to the minimum BMPs identified in Section  
 22 X.H.1, advanced BMPs must be implemented if necessary to reduce or prevent discharges of  
 23 pollutants in storm water dischargers in a manner that reflects best industry practice.  
 24 General Permit, Section X.H.2.

25       43.      Special Conditions Section XX.B of the General Permit requires a discharger  
 26 to prepare and submit documentation to the Regional Board upon determination that storm  
 27 water discharges are in violation of Receiving Water Limitations, Section VI. The  
 28 documentation must describe changes the discharger will make to its current BMPs in order

1 to prevent or reduce any pollutant in its storm water discharges that is causing or  
2 contributing to an exceedance of water quality standards. General Permit, Section XX.B.

3       44.     Section XV of the General Permit requires an annual evaluation of storm  
4 water controls including the preparation of an evaluation report and implementation of any  
5 additional measures in the SWPPP to respond to the monitoring results and other inspection  
6 activities within 90 days of the annual evaluation.

7       45.     The General Permit requires dischargers to eliminate all non-storm water  
8 discharges to storm water conveyance systems other than those specifically set forth in  
9 Section IV of the General Permit unless authorized by another NPDES permit. General  
10 Permit, Section III. B.

11       46.     The General Permit requires dischargers to implement a Monitoring  
12 Implementation Plan. General Permit, Section X.I. As part of their monitoring plan,  
13 dischargers must identify all storm water discharge locations. General Permit, Section X.I.2.  
14 Dischargers must then conduct monthly visual observations of each drainage area, as well as  
15 visual observations during discharge sampling events. General Permit, Section XI.A.1 and  
16 2. Dischargers must also collect and analyze storm water samples from two (2) storm events  
17 within the first half of each reporting year (July 1 to December 31) and two (2) storm events  
18 during the second half of each reporting year (January 1 to June 3). General Permit, Section  
19 XI.B. Section XI.B requires dischargers to sample and analyze during the wet season for  
20 basic parameters such as pH, total suspended solids (“TSS”) and oil and grease (“O&G”),  
21 certain industry-specific parameters, and other pollutants likely to be in the storm water  
22 discharged from the facility base on the pollutant source assessment. General Permit,  
23 Section XI.B.6.

24       47.     Dischargers must submit all sampling and analytical results via SMARTS  
25 within thirty (30) days of obtaining all results for each sampling event. Section XI.B.11.  
26 Sampling results must be compared to the two types of Numeric Action Level (“NAL”)  
27 values set forth at Table 2 of the General Permit. General Permit, Section XII. An annual  
28 NAL exceedance occurs when the average of the results for a parameter for all samples taken

1 within a reporting year exceeds the annual NAL value. General Permit, Section XII.A.1. An  
 2 instantaneous NAL exceedance occurs when two (2) or more results from samples taken for  
 3 any single parameter within a reporting year exceed the instantaneous maximum NAL value.  
 4 General Permit, Section XII.A.2. If a discharger has an NAL exceedance during a reporting  
 5 year, the discharger's status changes to Level 1 status under the General Permit and the  
 6 discharger must comply with the requirements set forth for Level 1 status operators set forth  
 7 at Section XII.C. The discharger's status shall change to Level 2 status if sampling results  
 8 indicated an NAL exceedance for a parameter while the discharger is in Level 1 status. If a  
 9 discharger becomes Level 2 status it must comply with the obligations set forth at Section  
 10 XII.D.

11       48. Dischargers must submit an Annual Report no later than July 15th following  
 12 each reporting year certifying compliance with the Permit and/or an explanation for any non-  
 13 compliance. General Permit, Section XVI.

14       **V. STATEMENT OF FACTS**

15       49. The Facility is classified as conforming to Standard Industrial Classification  
 16 ("SIC") Code 4111 ("Passenger Rail Service"). Industrial activities occur throughout the  
 17 Facility. EcoRights' investigation into the industrial activities at Defendants' approximately  
 18 4-acre facility indicates that the Facility is used to store, service and fuel railcars.

19       50. Plaintiff is informed and believes, and thereupon alleges, most of these  
 20 activities occur outside in areas that are exposed to storm water and storm flows due to the  
 21 lack of overhead coverage, functional berms and other storm water controls. Plaintiff is  
 22 informed and believes that Defendants' storm water controls, to the extent any exist, fail to  
 23 achieve BAT and BCT standards.

24       51. Plaintiff is informed and believes, and thereupon alleges: The management  
 25 practices at the Facility are wholly inadequate to prevent the sources of contamination  
 26 described above from causing the discharge of pollutants to waters of the United States and  
 27 fail to meet BAT and BCT standards. The Facility lacks essential structural controls such as  
 28 grading, berming and roofing to prevent rainfall and storm water flows from coming into

1 contact with these and other sources of contaminants, thereby allowing storm water to flow  
2 over and across these materials and become contaminated prior to leaving the Facility. In  
3 addition, the Facility lacks structural controls to prevent the discharge of water once  
4 contaminated. The Facility also lacks an adequate filtration system to treat water once it is  
5 contaminated.

6 52. Plaintiff is informed and believes, and thereupon alleges, that during rain  
7 events storm water laden with pollutants discharges from the Facility to the City of Gilroy's  
8 Municipal Separate Storm Sewer System, which conveys that water into Llagas Creek,  
9 which flows into the Pajaro River, and ultimately the Monterey Bay.

10 53. Information available to Plaintiff indicates that as a result of these practices,  
11 storm water containing pollutants harmful to fish, plant and bird life, and human health are  
12 being discharged from the Facility directly to these waters during significant rain events.

13 54. Information available to Plaintiff indicates that Defendants have not fulfilled  
14 the requirements set forth in the General Permit for discharges from the Facility due to the  
15 continued discharge of contaminated storm water.

16 55. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
17 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan at  
18 the Facility.

19 56. Information available to Plaintiff indicates the continued existence of  
20 unlawful storm water discharges at the Facility.

21 57. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
22 have failed to develop and implement adequate storm water monitoring, reporting and  
23 sampling programs at the Facility. Plaintiff is informed and believes, and thereupon alleges,  
24 that Defendants have not sampled with adequate frequency, have not conducted visual  
25 monitoring, and have not analyzed the storm water samples collected at the Facility for the  
26 required pollutant parameters.

27 58. Plaintiff is informed and believes, and thereupon alleges, that all of the  
28 violations alleged in this Complaint are ongoing and continuing.

1           59.       A justiciable controversy exists as Defendants deny and contest the foregoing  
 2 allegations and maintain that the Facility has been operated in full compliance with the Act  
 3 and Permit.

4       **VI. CLAIMS FOR RELIEF**

5           **FIRST CLAIM FOR RELIEF**

6           **Discharges of Contaminated Storm Water From The Facility  
                  in Violation of Permit Conditions and the Act  
                  (Violations of 33 U.S.C. §§ 1311(a), 1342)**

7           60.       Plaintiff incorporates the allegations contained in the above paragraphs as  
 8 though fully set forth herein.

9           61.       Receiving Water Limitations VI.A and VI.B of the General Permit require that  
 10 storm water discharges and authorized non-storm water discharges shall not adversely impact  
 11 human health or the environment, and shall not cause or contribute to a violation of any water  
 12 quality standards in any affected receiving water. Discharge Prohibition III.C of the General  
 13 Permit requires that storm water discharges and authorized non-storm water discharges shall  
 14 not cause or threaten to cause pollution, contamination, or nuisance.

15           62.       Plaintiff is informed and believes, and thereupon alleges, that since at least  
 16 May 13, 2010, Defendants have been discharging polluted storm water from the Facility into  
 17 Llagas Creek, the Pajaro River and the Monterey Bay in violation of the General Permit.

18           63.       Plaintiff is informed and believes, and thereupon alleges, that during every  
 19 significant rain even, storm water flowing over and through materials at the Facility becomes  
 20 contaminated with pollutants, flowing untreated from the Facility into Llagas Creek, the  
 21 Pajaro River and the Monterey Bay.

22           64.       Plaintiff is informed and believes, and thereupon alleges, that these discharges  
 23 of contaminated storm water are causing pollution and contamination of waters of the United  
 24 States in violation of Discharge Prohibition III.C of the General Permit.

25           65.       Plaintiff is informed and believes, and thereupon alleges, that these  
 26 discharges of contaminated storm water are adversely affecting human health and the  
 27 environment in violation of Receiving Water Limitations VI.A and VI.B of the General

## Permit.

66. Plaintiff is informed and believes, and thereupon alleges, that these discharges of contaminated storm water are contributing to the violation of the applicable water quality standards in the Statewide Water Quality Control Plan, the applicable Regional Board's Basin Plan, and/or the CTR, in violation of Receiving Water Limitation VI.A of the General Permit.

67. Plaintiff is informed and believes, and thereupon alleges, that every day since May 13, 2010, Defendants have discharged and continue to discharge polluted storm water from the Facility in violation of the General Permit. These violations are ongoing and continuous.

68. Every day Defendants have discharged and continue to discharge polluted storm water from the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants are subject to civil penalties for each and every violation of the Act since May 13, 2010. *See* 33 U.S.C. §§1319(d), 1365; 40 C.F.R. §19.4 (2008).

69. A justiciable controversy exists as Defendants deny and contest the foregoing allegations and maintain that the Facility has been operated in full compliance with the Act and Permit.

## **SECOND CLAIM FOR RELIEF**

**Failure to Develop and Implement an Adequate  
Storm Water Pollution Prevention Plan For the Facility  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

70. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

71. Section X of the General Permit require dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP prior to commencement of industrial activities.

72. Plaintiff is informed and believes, and thereupon alleges that Defendants have failed to develop and implement an adequate SWPPP for the Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced

1 by, *inter alia*, Defendants' outdoor storage of industrial materials without appropriate best  
2 management practices; the continued exposure of significant quantities of industrial material  
3 to storm water flows; the failure to either treat storm water prior to discharge or to  
4 implement effective containment practices; and the continued discharge of storm water  
5 pollutants from the Facility at levels in excess of EPA benchmark values and other  
6 applicable water quality standards.

7       73. Plaintiff is informed and believes, and thereupon alleges: Defendants have  
8 further failed to update the Facility's SWPPP in response to the analytical results of the  
9 Facility's storm water monitoring as required by the General Permit; Defendants continue to  
10 be in violation of the Act each day that they fail to develop and fully implement an adequate  
11 SWPPP for the Facility. These violations are ongoing and continuous.

12       74.     Each day that Defendants have failed to develop and implement an adequate  
13 SWPPP for the Facility in violation of the General Permit is a separate and distinct violation of  
14 Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants are subject to civil penalties for  
15 each and every violation of the Act since May 13, 2010. *See* 33 U.S.C. §§1319 (d), 1365; 40  
16 C.F.R. §19.4 (2008).

17       75.      A justiciable controversy exists as Defendants deny and contest the foregoing  
18 allegations and further maintain that the Facility has been operated in full compliance with the  
19 Act and Permit.

### **THIRD CLAIM FOR RELIEF**

**Failure to Develop and Implement the Best Available  
And Best Conventional Treatment Technologies at the Facility  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

22        76. Plaintiffs incorporate the allegations contained in the above paragraphs as  
23 though fully set forth herein.

24        77. The General Permit's SWPPP requirements and Effluent Limitation D.32  
25 require dischargers to reduce or prevent pollutants in their storm water discharges through  
26 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
27 pollutants.

78. Plaintiff is informed and believes, and thereupon alleges, Defendants have failed to implement BAT and BCT at the Facility for their discharges of Total Suspended Solids, Lead, Copper, Zinc and Specific Conductance and other unmonitored pollutants in violation of Effluent Limitation D.32 of the General Permit.

79. Each day that Defendants have failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

80. Plaintiff is informed and believes, and thereupon alleges: Defendants continue to be in violation of the BAT and BCT requirements each day that it fails to develop and fully implement BMPs meeting the BAT and BCT standards. These violations are ongoing and continuous.

81. Plaintiff is informed and believes, and thereupon alleges: Plaintiff is informed and believes, and thereupon alleges, Defendants have been in violation of the BAT and BCT requirements at the Facility every day since at least May 13, 2010, 2010. Defendants are subject to civil penalties for each and every violation of the Act since May 13, 2010. *See* 33 U.S.C. §§1319 (d), 1365; 40 C.F.R. §19.4 (2008).

82. A justiciable controversy exists as Plaintiff is informed that Defendants deny and contest the foregoing allegations and maintain that the Facility has been operated in full compliance with the Act and Permit.

**FOURTH CLAIM FOR RELIEF**

**Failure to Develop and Implement an Adequate  
Monitoring Implementation Plan for the Facility  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

83. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

84. Section X.I and Section XI. of the General Permit require dischargers of storm water associated with industrial activity to develop and implement a monitoring implementation plan (including, among other things, sampling and analysis of discharges) prior to commencement of industrial activities.

1       85. Plaintiff is informed and believes, and thereupon alleges that Defendants  
 2 have failed to develop and implement an adequate monitoring implementation plan for the  
 3 Facility. Defendants' ongoing failures to develop and implement adequate monitoring and  
 4 reporting programs are evidenced by, *inter alia*, their continuing failure to collect and analyze  
 5 storm water samples from all discharge locations, their continuing failure to analyze storm  
 6 water samples for pollutants likely to be present in the Facility's storm water discharges in  
 7 significant quantities and other pollutants, including Oil & Grease – 15.0 mg/L, Nickel – 1.417  
 8 mg/L, Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Cadmium –  
 9 0.0159 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L, as  
 10 the General Permit requires, and their failure to file required Annual Reports with the Regional  
 11 Board which provide required documentation and information relating to visual observations  
 12 and storm water sampling and analysis conducted at the Facility.

13       86. Plaintiff is informed and believes, and thereupon alleges, Defendants have  
 14 failed to develop and implement an adequate monitoring and reporting program for the  
 15 Facility in each day since at least May 13, 2010. These violations are ongoing and  
 16 continuous.

17       87. Each day of violation of the General Permit is a separate and distinct  
 18 violation of Section 301(a) of the Act, 33 U.S.C. §1311(a). Defendants are subject to civil  
 19 penalties for each and every violation of the Act since May 13, 2010. *See* 33 U.S.C. §§1319  
 20 (d), 1365; 40 C.F.R. §19.4 (2008).

21       88. A justiciable controversy exists as Defendants deny and contest the foregoing  
 22 allegations and maintain that the Facility has been operated in full compliance with the Act  
 23 and Permit.

24 **VII. RELIEF REQUESTED**

25       Wherefore, EcoRights respectfully requests that this Court grant the following relief:

26           a. Declare Defendants to have violated and to be in violation of CWA section  
 27 301(a), 33 U.S.C. § 1311(a), for discharging pollutants from its the Facility in violation of a  
 28 permit issued pursuant to CWA section 402, 33 U.S.C. § 1342 and for failing to comply

1 with all substantive and procedural requirements of the General Permit and the CWA as  
2 alleged herein;

3 b. Enjoin Defendants from discharging pollutants from the Facility and to the  
4 surface waters surrounding and downstream from the Facility in violation of the Act and the  
5 General Permit;

6 c. Enjoin Defendants from further violating the substantive and procedural  
7 requirements of the General Permit;

8 d. Order Defendants to pay civil penalties of \$37,500 per day per violation for  
9 all violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505(a) of the  
10 Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1–19.4 (2008);

11 e. Order Defendants to take appropriate actions to restore the quality of  
12 navigable waters impaired by their activities;

13 f. Award Plaintiff's costs and fees (including reasonable attorney, witness, and  
14 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

15 g. Award any such other and further relief as this Court may deem appropriate.

16 Dated: March 4, 2016

Respectfully Submitted,

17 LAW OFFICES OF ANDREW L. PACKARD

18 By: /s/ Andrew L. Packard

19 Andrew L. Packard  
20 Attorneys for Plaintiff  
ECOLOGICAL RIGHTS FOUNDATION

**EXHIBIT A**

LAW OFFICES OF  
**ANDREW L. PACKARD**

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

May 13, 2015

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Dustin L. Davis, Facility Engineer  
Carlos Leon, Manager of Equipment  
TransitAmerica Services, Inc.  
585 Lenzen Avenue  
San Jose, CA 95110

Dustin L. Davis, Facility Engineer  
Carlos Leon, Manager of Equipment  
TransitAmerica Services, Inc.  
7150 Monterey Road  
Gilroy, CA 95020

Dustin L. Davis, Facility Engineer  
Carlos Leon, Manager of Equipment  
TransitAmerica Services, Inc.  
65 Cahill Street  
San Jose, CA 95110

CT Corporation System  
Agent for Service of Process  
TransitAmerica Services, Inc.  
818 West Seventh Street, 2nd Floor  
Los Angeles, CA 90017

Stephen Chao,  
Deputy Director of Engineering SamTrans  
Peninsula Corridor Joint Powers Board  
1250 San Carlos Avenue  
San Carlos, CA 94070-1306

Stephen Chao,  
Deputy Director of Engineering SamTrans  
Peninsula Corridor Joint Powers Board  
P.O. Box 3006  
San Carlos, CA 94070-1306

**Re: Notice of Violation and Intent to File Suit  
Under the Federal Water Pollution Control Act**

Dear Mr. Davis, Mr. Leon and Mr. Chao:

This firm represents the Ecological Rights Foundation (“ERF”) in regard to violations of the Clean Water Act (“the Act”) occurring at TransitAmerica Services, Inc.’s (“TransitAmerica”) railcar maintenance facility located at 7150/7250 Monterey Road, in Gilroy, California (“the Facility”). The parcel numbers for the Facility are as follows: 84113017, 84113023 and 84113022. The WDID number for the Facility is 3 43I016608. ERF is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Llagas Creek, the Pajaro River and the Monterey Bay. This letter is being sent to you as the responsible owners, officers or operators of the Facility. Unless otherwise noted, Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. shall hereinafter be collectively referred to as “TransitAmerica.”

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 2 of 17

This letter addresses TransitAmerica's unlawful discharges of pollutants from the Facility into the city of Gilroy's Municipal Separate Storm Sewer System, which conveys that water into Llagas Creek, which flows into the Pajaro River, and ultimately Monterey Bay. TransitAmerica is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 92-12-DWQ, and Order No. 97-03-DWQ ("Permit").<sup>1</sup> Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. are hereby placed on formal notice by ERF that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, ERF intends to file suit in federal court against Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)) for violations of the Clean Water Act and the Permit. These violations are described more fully below.

## I. Background.

### A. The Clean Water Act.

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutant by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The Permit requirement extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand

---

<sup>1</sup> On April 1, 2014, the State Board reissued the Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current Permit remains in full force and effect.

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 3 of 17

discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). “Navigable waters” means “the waters of the United States” and includes, for example, traditionally navigable waters and tributaries to such waters. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2(c) and (e). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *U.S. v. Moses*, 496 F.3d 984, 990-991 (9th Cir. Aug. 3, 2007), *rehearing en banc denied* (2007).

ERF is informed and believes, and thereupon alleges, that TransitAmerica has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since June 18, 2001 or earlier.<sup>2</sup> Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TransitAmerica is subject to penalties for violations of the Act since May 13, 2010.

## B. TransitAmerica’s Facility, Water Quality Standards, and EPA Benchmarks

The Facility is located at 7150 Monterey Road in the City of Gilroy and discharges into the City of Gilroy’s Municipal Separate Storm Sewer System, which conveys that water into Llagas Creek, which flows into the Pajaro River, and ultimately Monterey Bay. The Facility falls under Standard Industrial Classification (SIC) Code 4111 (Passenger Rail Service). TransitAmerica submitted a Notice of Intent (NOI) to discharge under the General Permit on June 18, 2001. ERF’s investigations into the industrial activities at TransitAmerica’s approximately 4-acre Facility indicate that the Facility is used to store passenger and freight railcars, heavy machinery, waste oils, and scrap metals, including copper, steel and aluminum. Moreover, the Facility is used to service, fuel, wash, dismantle and maintain rail engine cars. TransitAmerica collects and discharges storm water from the Facility through at least six (6) discharge points into the city of Gilroy’s Municipal Separate Storm Sewer System, which conveys that water into Llagas Creek, which flows into the Pajaro River, and ultimately Monterey Bay. Llagas Creek, the Pajaro River and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board (“Regional Board”) has established water quality standards for the Pajaro River and the Monterey Bay in the “Water Quality Control Plan for the Central Coast Basin” (“Basin Plan”). The Basin Plan incorporates in its entirety the State Board’s “Water Quality Control Plan for Ocean Waters of California” (“Ocean Plan”). The Ocean Plan “sets forth limits or levels of water quality characteristics for

---

<sup>2</sup> Storm water is discharged in measurable amounts from the Facility on dates that include, but are not limited to, when 0.1 inches of rain falls on the Facility.

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 4 of 17

ocean waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives.” Ocean Plan, at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH is between 7.0 - 8.5 s.u. Basin Plan, at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and, Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels (MCLs) for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: Aluminum – 1.0 mg/L; Arsenic - 0.05 mg/L; Lead - 0.05 mg/L; and Mercury - 0.002 mg/L. *Id.* at III-7.

The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for Aluminum - 0.05 mg/L to 0.2 mg/L, and for Zinc - 5.0 mg/L. See <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: Aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); Chromium – 0.5 mg/L (primary); Copper – 1.0 mg/L (secondary); Iron – 0.3 mg/L; and Zinc – 5.0 mg/L. See California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule (“CTR”), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: Arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L; Chromium (III) – 0.550 mg/L (maximum concentration); Copper – 0.013 mg/L (maximum concentration); and Lead – 0.065 mg/L (maximum concentration).

The Regional Board has identified waters of the Central Coast, such as the Pajaro River, as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.<sup>3</sup> Discharges of pollutants into a surface water body may be deemed a “contribution” to an exceedance of the CTR, an applicable water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the Permit was “subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

---

<sup>3</sup> See [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2010state\\_ir\\_reports/category5\\_report.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml).

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 5 of 17

Under the Permit, benchmark levels established by the EPA (“EPA benchmarks”) serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).<sup>4</sup> The following benchmarks have been established for pollutants discharged by TransitAmerica: Total Suspended Solids – 100 mg/L; Zinc – 0.117 mg/L; Copper – 0.0636 mg/L; and Lead – 0.0816 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for Specific Conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that ERF believes are being discharged from the Facility, including but not limited to: Oil & Grease – 15.0 mg/L, Nickel – 1.417 mg/L, Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Cadmium – 0.0159 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

The Permit requires TransitAmerica to analyze storm water samples for Total Suspended Solids (TSS), pH, Specific Conductance (SC), and Total Organic Carbon (TOC) or Oil and Grease (O&G). Permit, Section B(5)(c)(i).

## II. TransitAmerica’s Violations of the Permit.

Based on its review of available public documents, ERF is informed and believes that TransitAmerica is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

### A. TransitAmerica Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).

The Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the Permit provides: “Except as allowed in Special Conditions (D.1.) of this Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water

---

<sup>4</sup> The Benchmark Values can be found at: [http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf), and <http://cwea.org/p3s/documents/multi-sectorrev.pdf>. (Last accessed on April 27, 2015).

## Notice of Violation and Intent To File Suit

May 13, 2015

Page 6 of 17

discharge. Discharge Prohibition A(2) provides: “Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

Receiving Water Limitation C(1) of the Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

TransitAmerica has discharged and continues to discharge storm water at unacceptable levels of Total Suspended Solids, Zinc, Copper, Lead, and Specific Conductance in violation of the Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. TransitAmerica’s Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the Permit:

**1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/16/2011	Storm Drain 1	TSS	280 mg/L	100 mg/L
2/16/2011	Storm Drain 4	TSS	160 mg/L	100 mg/L
3/18/2011	Storm Drain 1	TSS	870 mg/L	100 mg/L
2/16/2011	Storm Drain 3	TSS	670 mg/L	100 mg/L
2/29/2012	Storm Drain 2	TSS	110 mg/L	100 mg/L
3/20/2013	Storm Drain 1	TSS	843 mg/L	100 mg/L
3/20/2013	Storm Drain 2	TSS	506 mg/L	100 mg/L

## Notice of Violation and Intent To File Suit

May 13, 2015

Page 7 of 17

3/20/2013	Storm Drain 3	TSS	463 mg/L	100 mg/L
2/6/2014	Storm Drain 2	TSS	110 mg/L	100 mg/L

**2. Discharge of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/16/2011	Storm Drain 1	Zn	0.25 mg/L	0.117 mg/L
3/18/2011	Storm Drain 1	Zn	9.1 mg/L	0.117 mg/L
2/29/2011	Storm Drain 2	Zn	0.37 mg/L	0.117 mg/L
2/29/2012	Storm Drain 3	Zn	0.32 mg/L	0.117 mg/L
2/29/2012	Storm Drain 4	Zn	0.32 mg/L	0.117 mg/L
11/28/2012	Storm Drain 1	Zn	0.211 mg/L	0.117 mg/L
11/28/2012	Storm Drain 2	Zn	0.217 mg/L	0.117 mg/L
11/28/2012	Storm Drain 3	Zn	0.211 mg/L	0.117 mg/L
3/20/2012	Storm Drain 1	Zn	0.165 mg/L	0.117 mg/L
3/20/2012	Storm Drain 2	Zn	0.129 mg/L	0.117 mg/L
3/20/2012	Storm Drain 3	Zn	0.18 mg/L	0.117 mg/L

Notice of Violation and Intent To File Suit  
 May 13, 2015  
 Page 8 of 17

**3. Discharge of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
3/18/2011	Storm Drain 1	Cu	0.14 mg/L	0.0636 mg/L
3/20/2013	Storm Drain 1	Cu	0.0668 mg/L	0.0636 mg/L

**4. Discharge of Storm Water Containing Lead (Pb) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
3/18/2011	Storm Drain 1	Pb	0.19 mg/L	0.0816 mg/L

**5. Discharge of Storm Water Containing Specific Conductance (SC) at Concentrations in Excess of Proposed Benchmark.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
3/20/2013	Storm Drain 1	SC	539 µmhos/cm	200 µmhos/cm
3/20/2013	Storm Drain 2	SC	573 µmhos/cm	200 µmhos/cm
3/20/2013	Storm Drain 3	SC	539 µmhos/cm	200 µmhos/cm

The above sample results demonstrate violations of Effluent Limitation B(3). ERF's investigations, including a review of TransitAmerica's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Specific Conductivity, indicates that TransitAmerica has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Zinc, Copper, Lead, and Specific Conductance in violation of Effluent Limitation B(3) of the Permit. TransitAmerica was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, TransitAmerica is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above sample data demonstrates that TransitAmerica's discharges adversely impact human health or the environment in violation of Receiving Water Limitation C(1) of the Permit,

Notice of Violation and Intent To File Suit

May 13, 2015

Page 9 of 17

and that these discharges cause or threaten to cause pollution, contamination or nuisance in violation of Discharge Prohibition A(2). The above samples may also constitute violations of Receiving Water Limitation C(2) of the Permit, with respect to the discharge of parameters for which TransitAmerica has failed to undertake testing and which cause or contribute to an exceedance of applicable water quality standards, including CTR limits.

ERF is informed and believes that TransitAmerica has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least May 13, 2010. ERF alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since May 13, 2010, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which ERF alleges that TransitAmerica has discharged storm water containing impermissible levels of Total Suspended Solids, Zinc, Copper, Lead, and Specific Conductance in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TransitAmerica is subject to penalties for violations of the Permit and the Act since May 13, 2010.

**B. TransitAmerica Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Permit, Section A(8). ERF's investigations, and the Facility's exceedances of EPA benchmarks explained above, indicate that TransitAmerica has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Zinc, Copper, Lead, Specific Conductance and other unmonitored pollutants in violation of Effluent Limitation B(3) of the Permit.

To meet the BAT/BCT requirement of the Permit, TransitAmerica must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, ERF believes that at a minimum TransitAmerica must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. TransitAmerica has failed to adequately implement such measures.

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 10 of 17

TransitAmerica was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, TransitAmerica has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. TransitAmerica is subject to penalties for violations of the Permit and the Act occurring since May 13, 2010.

**C. TransitAmerica Has Failed to Implement an Adequate Monitoring & Reporting Program.**

Section B of the Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Program by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for Total Suspended Solids, pH, Specific Conductance, and Total Organic Carbon. Oil and Grease may be substituted for Total Organic Carbon. Section B(5)(c)(ii) of the Permit further requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” Section B(10) of the Permit provides that “Facility operators shall explain how the Facility’s monitoring program will satisfy the monitoring program objectives of [Permit] Section B.2.”

Based on their investigations, ERF is informed and believes that TransitAmerica has failed to develop and implement an adequate Monitoring & Reporting Program.

As an initial matter, based on its review of publicly available documents, ERF is informed and believes that TransitAmerica has failed to collect storm water samples during at least two qualifying storms events, as defined by the Permit, during at least three of the past five Wet Seasons (2010-2011, 2012-2013, 2013-2014). Second, based on its review of publicly available documents, ERF is informed and believes that TransitAmerica has failed to employ adequate testing methods and detection limits in violation of the Permit for the past five wet seasons. Further, TransitAmerica has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the Permit during at least three of the past five Wet Seasons. Finally, based on its review of publicly available documents, ERF is informed and believes that TransitAmerica has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Oil & Grease – 15.0 mg/L, Nickel – 1.417 mg/L, Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Cadmium – 0.0159 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

Each of these failures constitutes a separate and ongoing violation of the Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 11 of 17

brought pursuant to the Clean Water Act, TransitAmerica is subject to penalties for violations of the Permit and the Act since May 13, 2010. These violations are set forth in greater detail below.

**1.     TransitAmerica Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events During Three of The Last Five Wet Seasons.**

Based on its review of publicly available documents, ERF is informed and believes that TransitAmerica has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during three of the past five Wet Seasons, as required by the Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

TransitAmerica reported in four of the past five Wet Seasons (i.e., 2010-2011; 2011-2012; 2012-2013; 2013-2014 Wet Seasons), that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season during those four Wet Seasons. For example, TransitAmerica reported in its 2011-2012 Annual Report that it sampled the first qualifying storm event of the Wet Season, but TransitAmerica's first sample is from February 29, 2012. Based upon its review of publicly available rainfall data, ERF is informed and believes that the first qualifying storm event of the 2011-2012 Wet Season occurred as early as October 5, 2011, when 0.6" of rain fell on the Facility. These failures to adequately monitor storm water discharges constitutes separate and ongoing violations of the Permit and the Act.

**2.     TransitAmerica's Failure to Employ Adequate Testing Methods and Detection Limits in Violation of the Permit Since May 13, 2010.**

TransitAmerica is in violation of the Permit's requirement that the detection limits used in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." Permit Section B(10)(a)(iii). In every single annual report filed by TransitAmerica, the detection limits employed by the laboratory utilized by TransitAmerica to analyze the concentration of the pollutants present in the storm water discharged from its Facility did not comply with these Permit requirements.

Specifically, the detection limits TransitAmerica applied over past four Wet Seasons have differed dramatically every year leading to inaccurate or unreliable sample results that failed to meet the standard set forth in Section B(10)(a)(iii). For example, the detection limit applied by TransitAmerica for Lead in 2010, 2011, 2012, 2013 and 2014 was 0.0023 mg/L, 0.005 mg/L, 0.1 mg/L, and 0.002 mg/L respectively. These are just a few of many examples of TransitAmerica's failure to adequately test the presence and concentration of pollutants at their storm water discharge points. TransitAmerica is in violation of the Permit for failing to employ laboratory test methods that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 12 of 17

Receiving Water Limitations specified in this Permit.” Permit, Section B(2)(a) (“Monitoring Program Objectives”).

ERF is informed and believes that publicly available documents demonstrate TransitAmerica’s consistent and ongoing failure to implement an adequate Monitoring and Reporting Program in violation of Section B of the Permit. Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TransitAmerica is subject to penalties for these violations of the Permit and the Act since May 13, 2010.

### **3. TransitAmerica Has Failed to Conduct Monthly Wet Season Observations of Storm Water Discharges As Required by the Permit.**

The Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30).” Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in TransitAmerica’s Annual Reports for three of the last five Wet Seasons, ERF is informed and believes that TransitAmerica has failed to comply with this requirement of the Permit.

Specifically, TransitAmerica failed to conduct monthly visual observations of discharges from qualifying storm events for all months during three of the past five Wet Seasons (i.e 2010-2011, 2011-2012, and 2012-2013) as required by the Permit. TransitAmerica either completely failed to document visual observations at all, or documented its visual observations of storm water that discharged during non-qualifying storm events during three of the past five Wet Seasons. However, based on publicly available rainfall data, ERF is informed and believes that there were many qualifying storm events during each of these Wet Seasons that TransitAmerica could have observed.

For example, TransitAmerica reported in its 2011-2012 Annual Report that, except for the months of February, March, and April it did not observe a discharge or there was no rain during the entire Wet Season. Based on its investigation of publicly available rainfall data, ERF is informed and believes that this could not be possible because there were numerous significant rainfall events during those months. *See Attachment A.* TransitAmerica’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least May 13, 2010, and has caused and continues to cause multiple, separate and ongoing violations of the Permit and the Act.

### **4. TransitAmerica’s Failure to Analyze Storm Water Samples for All Required Constituents.**

The Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” Permit Section B(5)(c)(ii). ERF is informed and believes that TransitAmerica has violated the Permit by failing to analyze samples for pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility during four of the past five Wet

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 13 of 17

Seasons (i.e. 2009-2010, 2010-2011, 2011-2012, 2013-2014) including: Oil & Grease – 15.0 mg/L, Nickel – 1.417 mg/L, Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Cadmium – 0.0159 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

Each failure to sample for all required constituents is a separate and distinct violation of the Permit and Clean Water Act. Accordingly, TransitAmerica is subject to penalties for these violations of the Permit and the Act since May 13, 2010.

**D. TransitAmerica Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) require dischargers who submitted an NOI pursuant to the Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges. Permit, Section A(2). The SWPPP must also include BMPs that achieve BAT and BCT. Effluent Limitation B(3).

The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (Permit, Section A(4)); a list of significant materials handled and stored at the site (Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective. Permit, Section A(7), (8). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary. Permit, Section A(9),(10). Receiving Water Limitation C(3) of the Permit requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 14 of 17

the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

ERF's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that TransitAmerica has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. TransitAmerica has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, TransitAmerica has been in continuous violation of Section A(1) and Provision E(2) of the Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. TransitAmerica is subject to penalties for violations of the Permit and the Act occurring since May 13, 2010.

**E. TransitAmerica Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, TransitAmerica is discharging elevated levels of Total Suspended Solids, Zinc, Copper, Lead, Specific Conductance, and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, TransitAmerica was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on ERF's review of available documents, TransitAmerica was aware of high levels of these pollutants long before May 13, 2010. TransitAmerica has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the Permit every day since May 13, 2010, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. TransitAmerica is subject to penalties for violations of the Permit and the Act occurring since May 13, 2010.

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 15 of 17

**F. TransitAmerica Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. Permit, Sections B(14), C(9), (10). Section A(9)(d) of the Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the Permit. *See also* Permit, Sections C(9) and (10) and B(14).

ERF's investigations indicate that TransitAmerica has submitted incomplete Annual Reports and purported to comply with the Permit despite significant noncompliance at the Facility. For example, TransitAmerica reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2010-2011, 2011-2012, 2012-2013 and 2013-2014) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on ERF's review of publicly available rainfall data, ERF believes this is incorrect.

Further, TransitAmerica failed to sample from qualifying storm events in three of the last five Wet Seasons in violation of the Permit. For example, in the 2010-2011 Annual Report TransitAmerica reported that it sampled from a storm event on February 16, 2011. However based on publicly available rainfall data ERF, is informed and believes that it the storm that occurred at the Facility on February 16, 2011 was not a qualifying storm event because 0.23 inches of rain fell on the Facility on February 14, 2011. Thus, the February 14th storm event very likely rendered any storm occurring for three days afterwards non-qualifying under the Permit. These are but a few examples of how TransitAmerica has failed to file completely true and accurate reports. As indicated above, TransitAmerica has failed to comply with the Permit and the Act consistently for the past five years; therefore, TransitAmerica violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time TransitAmerica submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years. ERF hereby notifies TransitAmerica that it intends to sue regarding all such violations. TransitAmerica's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. TransitAmerica is subject to penalties for violations of Section (C) of the Permit and the Act occurring since May 13, 2010.

**IV. Persons Responsible for the Violations.**

ERF puts Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, ERF puts Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. on formal notice that it intends to include those persons in this action.

**V. Name and Address of Noticing Parties.**

The name, address and telephone number of each of the noticing parties is as follows:

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 16 of 17

Ecological Rights Foundation, James Lamport, Executive Director, 867 B Redwood Drive, Garberville, California 95542.

**VI. Counsel.**

ERF has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
Megan Truxillo  
John J. Prager  
LAW OFFICES OF ANDREW L. PACKARD  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Email: Andrew@PackardLawOffices.com

**VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, ERF will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

ERF believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Andrew L. Packard  
Counsel for  
Ecological Rights Foundation

Notice of Violation and Intent To File Suit  
May 13, 2015  
Page 17 of 17

**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jared Blumenfeld  
Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Eric Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Thomas Howard, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Kenneth A. Harris, Jr., Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

**ATTACHMENT A**  
**Notice of Intent to File Suit, TransitAmerica Services, Inc.**  
**Significant Rain Events,\* May 13, 2010 – May 13, 2015**

May 25, 2010	March 23, 2011	April 12, 2012	February 8, 2014
May 27, 2010	March 24, 2011	April 13, 2012	February 9, 2014
October 17, 2010	March 25, 2011	April 15, 2012	February 26, 2014
October 22, 2010	March 26, 2011	October 22, 2012	February 27, 2014
October 23, 2010	April 8, 2001	October 23, 2012	February 28, 2014
October 24, 2010	May 15, 2011	November 16, 2012	March 1, 2014
November 19, 2010	May 16, 2011	November 17, 2012	March 3, 2014
November 20, 2010	May 17, 2011	November 18, 2012	March 26, 2014
November 21, 2010	May 18, 2011	November 28, 2012	March 29, 2014
November 23, 2010	June 4, 2011	November 29, 2012	March 31, 2014
November 27, 2010	June 28, 2011	November 30, 2012	April 1, 2014
December 5, 2010	October 5, 2011	December 2, 2012	April 4, 2014
December 14, 2010	November 4, 2011	December 3, 2012	April 25, 2014
December 17, 2010	November 5, 2011	December 5, 2012	September 25, 2014
December 18, 2010	November 11, 2011	December 15, 2012	October 25, 2014
December 19, 2010	November 18, 2011	December 17, 2012	October 31, 2014
December 21, 2010	November 19, 2011	December 22, 2012	November 1, 2014
December 22, 2010	November 20, 2011	December 23, 2012	November 13, 2014
December 25, 2010	January 19, 2012	December 25, 2012	November 19, 2014
December 28, 2010	January 20, 2012	December 26, 2012	November 29, 2014
December 29, 2010	January 21, 2012	December 29, 2012	November 30, 2014
January 1, 2011	January 22, 2012	January 5, 2013	December 1, 2014
January 2, 2011	January 23, 2012	January 6, 2013	December 2, 2014
January 30, 2011	February 7, 2012	January 24, 2013	December 3, 2014
February 14, 2011	February 13, 2012	February 16, 2013	December 5, 2014
February 16, 2011	February 15, 2012	March 6, 2013	December 11, 2014
February 17, 2011	February 29, 2012	March 7, 2013	December 12, 2014
February 18, 2011	March 1, 2012	April 1, 2013	December 16, 2014
February 19, 2011	March 16, 2012	April 4, 2013	December 17, 2014
February 24, 2011	March 17, 2012	October 29, 2013	December 19, 2014
February 25, 2011	March 18, 2012	November 19, 2013	December 20, 2014
February 26, 2011	March 24, 2012	November 20, 2013	February 6, 2015
March 13, 2011	March 25, 2012	December 6, 2013	February 7, 2015
March 16, 2011	March 27, 2012	December 7, 2013	February 8, 2015
March 18, 2011	March 28, 2012	January 30, 2014	March 11, 2015
March 19, 2011	March 31, 2012	February 2, 2014	April 7, 2015
March 20, 2011	April 10, 2012	February 6, 2014	April 25, 2015
March 21, 2011	April 11, 2012	February 7, 2014	

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.